

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER K SUTTON
Claimant

LINT VAN LINES INC
Employer

APPEAL 15A-UI-04407-DGT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 6, 2015 (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 19, 2015. Claimant participated. Employer participated by Sharen McClure, Human Resources Manager. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 10, 2015. Claimant submitted a written resignation on March 24, 2015; which became effective on that date.

Claimant was granted a medical leave of absence on or about September 5, 2014. Claimant underwent medical treatment and was released back to work without any restrictions on or about March 2, 2015. Claimant returned to work and was having difficulties lifting and moving heavy objects. Employer became aware of claimant's difficulties with lifting and requested additional information from the claimant and her doctor verifying that she was released back to work without any restrictions.

Claimant called into work on March 11, 2015 and was not able to work on that date because she was sore from the heavy lifting she had done the day before. Claimant sought medical advice from her therapist and did not come back to work at that time because she was experiencing some pain. On or about March 24, 2015, claimant submitted her written resignation. Claimant did not like all the questions her and her doctor were being asked about her ability to work and her restrictions, and she believed she was not being treated fairly by the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was having continued pain and discomfort after returning from medical leave.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(21), (22), (27), and (35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). An employee's failure to return to the employer and offer services upon recovery from an injury "statutorily constitutes a voluntary quit and disqualifies an individual from unemployment insurance benefits." *Brockway v. Emp't Appeal Bd.*, 469 N.W.2d 256 (Iowa Ct. App. 1991).

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good cause reason attributable to the employer. Benefits must be denied.

DECISION:

The decision of the representative dated April 6, 2015 (reference 02) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/can